



*The business voice on immigration*

# STATE WATCH LIST

## Immigration Enforcement in the 2012 Legislative Sessions

With Congress deadlocked and still unable to act on immigration, state lawmakers across the country continue to take matters into their own hands.

A virtual revolution has occurred in the past five years on the question of who should make immigration law, the federal government or the states. What once seemed unthinkable to many is now commonplace, with a third of the states mandating that some or all employers enroll in the federal E-Verify system and five states allowing police to ask for identification from people they stop for other reasons who they suspect are in the country illegally. The U.S. Supreme Court confounded expectations last year by ruling that states are well within their rights to require E-Verify and suspend and revoke the business licenses of employers found to have hired unauthorized immigrants. This year, the Court will hear yet another immigration federalism case – the U.S. Department of Justice's challenge to Arizona's 2010 policing law, SB 1070. A decision in *U.S. v. Arizona* is expected before the Fourth of July.

States across the country have other matters on their minds this year: redistricting, worsening budget problems, rising public demands to create jobs. But if the first weeks of the 2012 sessions are any guide, immigration remains an issue in many states.

Among the measures likely to be of concern to employers: E-Verify requirements unaccompanied by opportunities to hire legal foreign workers, new penalties for employing unauthorized immigrants, policing laws likely to have unintended consequences for legal residents and put off out-of-state investors concerned about a climate that seems inhospitable to foreigners.

Another provision pioneered last year that could deter investors: provisions requiring schools and hospitals to inquire about the immigration status of students and patients. Still another troubling and potentially costly new trend: measures invalidating contracts with unauthorized immigrants and barring them from entering into agreements with government agencies – bans that could nullify everything from leases to building permits.

Political tactics are evolving too. Proponents of enforcement-only legislation have learned from the challenges of recent years. Sponsors of legislation are being encouraged to break measures up into smaller pieces – easier to get through the legislature and less likely to be struck down in court. And even in states where passing new law is unlikely, some lawmakers are hoping to use immigration as a wedge issue – to box in Democratic governors, embarrass fellow legislators and drive anti-immigrant voters to the polls.

Just weeks into the 2012 sessions, it's too soon to predict outcomes. But here are some states to watch in the weeks and months ahead.

## PROPOSED LEGISLATION

**KANSAS** With influential restrictionist attorney Kris Kobach now Kansas Secretary of State, Kansas legislators are all but certain to try to move something on immigration. In December, Kobach told the media that he expects lawmakers to push for a policing provision modeled on Arizona's controversial 2010 law that requires local law enforcement to verify the immigration status of people they stop for other reasons who they suspect are in the country illegally. Also anticipated: some sort of E-Verify requirement and a provision that requires proof of citizenship to receive state services.

In January, lawmakers in the Senate and House introduced companion bills that mandate E-Verify for government contractors.

A business coalition backed by the livestock industry – one of the most powerful in the state – is expected to introduce competing legislation creating a guest worker program for unauthorized immigrants living in Kansas. Early drafts give unauthorized immigrants who have been in the state for five years permission to work for designated employers who pay a fee to sponsor the employees. The measure requires authorization from the federal government before it can go into effect.

**MISSOURI** In late January, a Senate committee approved a double-barreled bill that combines an Arizona-like policing provision with a requirement, modeled on law passed last year in Alabama, that public school teachers collect information about students' immigration status.

Local observers are divided about the measure's prospects, with some predicting fast action and others expecting slow death in committee. Governor Jay Nixon is a Democrat but, according to insiders, not likely to veto an immigration bill.

Another bill introduced in the House in January mandates E-Verify for all employers in the state. (Existing Missouri law requires E-Verify only for state agencies and contractors doing business with state government.) The proposed bill also adds new penalties for knowingly hiring unauthorized workers: not just suspension of the employer's business license, but also fines and imprisonment.

**MISSISSIPPI** The first state in the Southeast to mandate E-Verify for all employers, in 2008, Mississippi now appears eager to catch up with neighboring legislatures that have passed tougher immigration enforcement laws in the intervening years. Republican Sen. Joey Fillingane has proposed an Arizona-like policing measure that gives local law enforcement authority to ask people they stop about their immigration status, requires unauthorized immigrants to carry identity documents and prohibits the transportation and harboring of unauthorized immigrants. According to local observers, last year's Republican takeover of the House increases the bill's chances of passing. The new Republican governor, Phil Bryant, has said he believes immigration is an issue on which the state can and should take action.

**ALABAMA** Alabama's 2011 immigration enforcement statute, HB 56, is widely regarded as the toughest in the nation, and its unintended consequences for legal residents and visitors have been the subject of intense media scrutiny. Driven by this negative publicity, in recent weeks Republican Governor Robert Bentley, Republican attorney general Luther Strange and several of the measure's Republican sponsors have expressed willingness to revisit the law and perhaps modify some aspects of it.

Among the provisions said to be under scrutiny: requiring unauthorized immigrants to carry identity documents, making it a state crime to harbor unauthorized immigrants and requiring public schools to collect data about the immigration status of students.

**VIRGINIA** Immigration enforcement has been a contentious issue in the Virginia legislature since 2006, and with the governor and both chambers now solidly Republican, people on the ground predict that a broad enforcement bill could move this year. Among the measures that have been introduced this session: an Arizona-style policing bill, a provision that mandates E-Verify for day laborers and an Alabama-like proposal that requires schools to check the immigration status of students and their families. The school verification bill died in committee in January.

**UTAH** Immigration was a leading issue in Utah last year: the legislature passed a controversial package that included an Arizona-like policing law and a guest worker program for unauthorized immigrants already living and working in the state. The policing provision has been temporarily blocked in court, and lawmakers are expected to return to the issue again this year.

One measure circulating among lawmakers would increase penalties for businesses that fail to use E-Verify. Several other proposals would repeal and replace the 2011 guest worker law. One bill introduced in January would significantly restrict who is eligible to participate in the guest worker program and impose sanctions on police chiefs whose departments fail to enforce federal immigration law. Local observers predict there will also be other efforts to modify last year's statute, including by eliminating the provision that initiates the guest worker program in 2013 whether or not the state has received a federal waiver.

**NEW MEXICO** Newly elected Governor Susana Martinez, a Latina Republican, has introduced legislation to repeal existing law that allows unauthorized immigrants to obtain driver's licenses. Insiders expect the repeal to encounter opposition in the Democrat-controlled legislature but predict passage of another replacement bill that would require unauthorized immigrants to renew their licenses every two years.

Also moving through the legislature is a Democrat-sponsored double-barreled measure that would combine new employer penalties with a guest worker program for unauthorized workers living in New Mexico. Qualified unauthorized workers would be granted renewable two-year work permits, and they and their immediate family members would be allowed to remain in the state. Employers would be required to enroll in E-Verify and in a new state verification system. Penalties for hiring unauthorized immigrants would be severe: fines and revoked licenses. Implementation would depend on federal approval, and few local observers expect the bill to move in this year's short legislative session, but business interests expect it to generate debate.

**GEORGIA** The sweeping immigration enforcement measure passed in Georgia in 2011 has been temporarily blocked in court. Several Democratic lawmakers have expressed interest in repealing or modifying it, and two bills have been introduced. One would delay implementation of the provision mandating E-Verify for businesses with fewer than 50 workers. The other would repeal the entire 2011 law.

Republicans staunchly oppose repeal. Indeed, several sponsors of last year's measure would like to go further, passing additional enforcement provisions, and one bill filed in recent weeks would ban unauthorized immigrants from public universities.

Local observers are unsure if any of these measures will have enough support to move.

**ARIZONA** For eight years, Arizona has been leading the charge to enact state immigration enforcement law, and most of the statutes passed coast to coast have been modeled on Arizona measures. But last year, for the first time, several immigration bills were defeated in Arizona. Then in November, the architect of the state crackdown, Republican Senate President Russell Pearce, was removed from office by a statewide recall vote, and local observers predict that this year may be different in Arizona.

Sponsors of the bills defeated in 2011 have promised to introduce them again this year. But other Arizonans predict that the legislature will wait to see how the U.S. Supreme Court rules on the state's 2010 policing law before voting on other measures. The Supreme Court ruling is not expected until after the Arizona session adjourns. Meanwhile, immigrant rights advocates are circulating petitions in favor of a ballot initiative that would allow unauthorized immigrants to pay in-state tuition to public universities.

**TENNESSEE** Although several controversial immigration enforcement bills were left pending at the end of last year's session, GOP leaders said in January that most would not be reintroduced. What Republican lawmakers say they will try to move: a measure that requires state authorities to use the federal SAVE system to verify the legal status of immigrants receiving state benefits.

Local observers don't rule out the possibility that other bills will be introduced, including an Arizona-like policing measure. But with the state's 2011 E-Verify mandate being phased in this year, insiders are skeptical that anything other than the SAVE mandate will progress in the legislature.

**SOUTH DAKOTA** Worksite enforcement measures have been introduced in both the House and the Senate. Both bills would create an incentive to use E-Verify by suspending and revoking the business licenses of employers not enrolled in the program who are found to have hired unauthorized workers. One novel provision not seen before in other states: making it a crime – punishable as identity theft – for employers to knowingly accept false documentation when hiring employees. Local observers are skeptical that either bill will move.

**OKLAHOMA** In 2007, Oklahoma passed what was then one of the toughest immigration laws in the country: it required state offices and employers doing business with the state to enroll in E-Verify and created a private right of action for terminated U.S. workers who believe they have been replaced by unauthorized immigrants. After many years in court, most of the measure was upheld earlier this year, but some Oklahoma voters are pressing legislators to add new provisions. Outgoing House Speaker Kris Steele appears to be resisting the pressure but doesn't rule out action on immigration. Meanwhile, Republican Senator Harry Coates has introduced legislation that would grant work permits to unauthorized immigrants living in Oklahoma.

**FLORIDA** Lawmakers in the House and Senate have introduced bills mandating E-Verify for all employers and creating a private right of action for U.S. workers who claim they were fired and replaced by unauthorized immigrants.

But with only days left to clear several assigned subcommittees, the House bill appears all but dead. And local observers say most lawmakers are focused on more pressing matters – redistricting, the budget and creating jobs for Florida.

**NEBRASKA** Two bills are left over from last year's session: an Arizona-like policing law and a bill that mandates E-Verify for private employers. (Existing Nebraska law requires E-Verify for public employers and contractors doing business with the state.) There appears to be some support for the policing bill, and the governor says he will sign whatever passes. But insiders are skeptical that either measure will gain traction in the unicameral legislature's short 2012 session.

**KENTUCKY** The only state in the Southeast that has not yet adopted any kind of workplace immigration enforcement, Kentucky is now considering several measures. One of two bills introduced before the session began would mandate E-Verify for public contractors. The other would suspend and revoke the business licenses of employers not enrolled in the program who are found to have hired unauthorized workers.

**NEW HAMPSHIRE** Until now, no legislature in the Northeast has passed any kind of state immigration enforcement law. But immigration was one of the first issues to come up in the 2012 New Hampshire session: in January, a House committee held a hearing on a bill that would mandate E-Verify for all employers in the state.

**CALIFORNIA** Several proposals are circulating to deal with the estimated 2.5 million unauthorized immigrants living in California. One measure introduced in January would issue work permits to unauthorized immigrants who have been working in agriculture and the service sector and have never been convicted of a felony. The proposal would require a federal waiver. Another measure being considered – perhaps as legislation, perhaps as a ballot initiative – would grant safe harbor to unauthorized workers who have lived in California for four years and have no felony convictions.

**WASHINGTON** House lawmakers have introduced a measure modeled on one enacted last year in California that would bar state and local authorities from requiring businesses to use E-Verify.

## COMPACTS

Employers, faith leaders and immigrant rights activists in **ARIZONA, COLORADO, IOWA** and **OKLAHOMA** are working to forge civic covenants modeled on the Utah Compact. A statement of principles issued last year by a broad range of civic and religious groups in that state, the Utah Compact called on lawmakers to go beyond enforcement alone and consider a more balanced approach to immigration. The compact is widely seen as having paved the way for the innovative legislation passed in Utah in March 2011.

*ImmigrationWorks USA is a national federation of small business owners advocating immigration reform. The organization links 25 state-based, pro-immigration business coalitions: employers and trade associations from Florida to Oregon and from every sector of the economy that relies on immigrant workers. Their shared goal: legislation that brings America's annual legal intake of foreign workers more realistically into line with the country's labor needs.*